

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
ROWENA PERRY,) CASE NO. 06-60336 JPK
) Chapter 13
Debtor.)

ORDER REGARDING MOTION TO REDUCE ORDER
OF ATTORNEY FEES ["MOTION"]

The Motion was filed by the Chapter 13 Trustee on August 3, 2007. The Motion appears to request modification of the order of confirmation entered in this case. That order awarded attorney compensation for legal services rendered by the debtor's counsel to the date of confirmation of the plan of \$2800.00, and, based upon the record before the Court at the time of entry of the order, recited that \$800.00 of that award had been paid, leaving an unpaid balance of \$2189.00 (\$2000.00 of fees and \$189.00 of expenses) to be paid by the Trustee to debtor's counsel under the terms of the confirmed plan. The Motion apparently asserts that debtor's counsel received payment of more than the \$800.00 recited in the confirmation order, and in fact received total payments of \$2000.00.

The Court first notes that a confirmation order is a final judgment, and that therefore in order to effect the modification requested by the Trustee, a motion pursuant to Fed.R.Bankr.P. 9024/Fed.R.Civ.P. 60(b) would be required, including compliance with N.D.Ind.L.B.R. B-9023-1(a). The Motion fails to conform to these requirements. However, in the Court's view, the Motion indicates a possible misunderstanding by the Trustee of the effect of the award of attorney's fees and expenses in a confirmation order. The primary purpose of the confirmation order with respect to allowance of attorney's fees is to state the award of those fees to which a Chapter 13 debtor's counsel is entitled up to the date of confirmation pursuant to 11 U.S.C. § 330. The award is actually "in gross". The balance of the confirmation order's statements concerning compensation merely reflects the amounts of payments disclosed on the record to

have been received by debtor's counsel, and the balance of the allowed amount of compensation remaining to be paid based upon the prior receipt of that amount. Paragraph 5 of the Motion proceeds on the premise that attorney's fees awarded to debtor's counsel should be reduced – that is an erroneous interpretation of the award of fees: debtor's counsel is clearly entitled to an award of \$2800.00 of compensation through the date of confirmation of the plan. The question which has arisen is one not of the amount of allowable compensation, but rather the amount to be paid as an administrative claim to debtor's counsel. This type of matter would seem to be rather easily adjusted by the Trustee's communication with counsel for the debtor, and the filing of an agreed immaterial modification of the plan (not required to be noticed to creditors or parties-in-interest) pursuant to 11 U.S.C. § 1329(a)(1), in order to simply reduce the amount to be paid on the administrative claim of counsel for the debtor as provided for by the plan.

Based upon the foregoing, the Court finds that it is not appropriate in the circumstances described in the Motion to seek to modify the confirmation order itself, which to the Court seems to be what the Motion actually requests. If communications with counsel for the debtor do not result in an agreed resolution, the proper form of motion is one for post-confirmation modification of the plan pursuant to 11 U.S.C. § 1329(a)(1).

IT IS ORDERED that the Motion is denied, without prejudice to seeking relief pursuant to the procedures set forth in this order.

Dated at Hammond, Indiana on August 13, 2007.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtor, Attorney for Debtor
Trustee, US Trustee